

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 18-82:

CHAUFFEURS, TEAMSTERS AND  
HELPERS, LOCAL #190,

Complainant,

- vs -

YELLOWSTONE COUNTY SCHOOL DISTRICT  
#26, LOCKWOOD SCHOOL SYSTEM,  
BILLINGS, MONTANA,

Defendant.

FINAL ORDER

\*\*\*\*\*

No exceptions having been filed, pursuant to ARM 24.26.215,  
to the Findings of Fact, Conclusions of Law and Recommended  
Order issued on February 8, 1983, by Hearing Examiner Rick  
D'Hooge;

THEREFORE, this Board adopts that Recommended Order in  
this matter as its FINAL ORDER.

DATED this 9th day of March, 1983.

BOARD OF PERSONNEL APPEALS

By

Joan Uda  
Joan Uda  
Alternate Chairman

\*\*\*\*\*

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy  
of this document was mailed to the following on the 9th day  
of March, 1983:

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Superintendent of Schools  
Lockwood Schools  
District 26 - Yellowstone Cty.  
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Janifer Jacobson

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE 18-82

CHAUFFEURS, TEAMSTERS AND HELPERS )  
LOCAL #190, )  
Complainant, )  
vs. )  
YELLOWSTONE COUNTY SCHOOL DISTRICT )  
#26, LOCKWOOD SCHOOL SYSTEM, )  
BILLINGS, MONTANA, )  
Defendant. )

\* \* \* \* \*

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER

\* \* \* \* \*

The Chauffeurs, Teamsters and Helpers Local No. 190 (Union) filed an unfair practice charge against Yellowstone County School District #26, Lockwood School System, Billings, Montana (School District) alleging that an agent of the School District threatened the School District employees with the loss of their jobs; that an agent of the School District displayed a proposed subcontracting agreement between the School District and an independent cleaning contractor to the School District employees; and that an agent of the School District warned the School District employees "not to get carried away" in negotiations or they would be replaced by an individual cleaning contractor. The School District denies all allegations.

A hearing was held on July 27, 1982, under the authority of Section 39-31-406 MCA and the Administrative Procedure Act (Title 2, Chapter 4, MCA). The parties stipulated that the defendant is a public employer as defined by the Collective Bargaining Act (Title 39, Chapter 31, MCA); that the complainant is a labor organization and defined by the

1 Collective Bargaining Act; and that the parties have no  
2 question of jurisdiction.

3 Because the Board of Personnel Appeals has little  
4 precedent in some areas, I will cite federal statute and  
5 case law for guidance in the application of Montana's Collec-  
6 tive Bargaining Act, Title 39, Chapter 31, MCA (Act). The  
7 federal statute will generally be the National Labor Relations  
8 Act, 29 U.S.C., Section 151-166 (NLRB) precedent for guidance.  
9 (State Department of Highways v. Public Employees Craft  
10 Council, 165 Mont. 349, 529 P.2d 785, 1974; AFSCME Local  
11 2390 v. City of Billings, 555 P.2d 507, 93 LRRM 2753, 1976;  
12 State of Montana ex. rel., Board of Personnel Appeals v.  
13 District Court of the Eleventh Judicial District, 598, P.2d  
14 1117, 36 State Reporter, 1531, (1979); Teamsters Local 45 v.  
15 Board of Personnel Appeals and Stewart Thomas McCarvel, 635  
16 P.2d 1310, 38 State Reporter 1841, (1981).

17 I. FINDINGS OF FACT

18 After a thorough review of the testimony, exhibits,  
19 post hearing briefs, and reply brief, I make the following  
20 findings:

21 1. In September of 1980, the Union won an election to  
22 represent a collective bargaining unit of about 10 employees  
23 consisting of housekeepers, custodians and an offset printer  
24 employed at the School District.

25 2. The parties entered into the first collective bar-  
26 gaining agreement which expired July 1, 1982.

27 3. In January of 1982, the Union held a meeting with  
28 the bargaining unit of the employees to draw up proposals  
29 for a new collective bargaining agreement.

30 4. On March 11, 1982, by letter, the Union served a  
31 notice to negotiate a new collective bargaining agreement.  
32 Attached to the notice to negotiate a new collective bargaining

1 unit were two pages of Union proposals including a proposal  
2 to change the job descriptions of the housekeepers. (Union  
3 Exhibit #1).

4 5. By letter of March 15, 1982, the Union notified  
5 the School District that Georgia Williams and Brenda Kline,  
6 Housekeeper, would be members of the Union negotiating team.  
7 The Union requested that Georgia Williams and Brenda Kline  
8 be available for any negotiating meetings. (Union Exhibit  
9 #2.)

10 6. Union witness Linda Zelmer, Housekeeper, testified  
11 that 1) there was some rumors among the teachers about  
12 subcontracting out the housekeeping duties; that Mr. Doug  
13 True, Maintenance and Housekeeping Supervisor, Lockwood  
14 School District, stated to her that the School District was  
15 just thinking about subcontracting the housekeeping and it  
16 was no big thing; 2) that about two weeks before the first  
17 negotiations meeting, Doug True handed a key ring to her  
18 from Maxine's Cleaning Company; 3) that about a week or so  
19 before the first negotiations meeting, Doug True entered the  
20 large junior high school bandroom where she and Marcy Strever  
21 were working; that Doug True told them that if they did not  
22 wish to lock doors and sweep entrances they would get their  
23 hours cut; that Doug True said Dennis Espeland, Superin-  
24 tendent, was mad and Dennis Espeland would cut their hours  
25 if they did not wish to work; that Doug True then said I  
26 want you girls to look at something and laid a proposal from  
27 a cleaning company on the podium; that the proposal had  
28 numbers on it, had no name on it and stated how much the  
29 School District could save by subcontracting; that she did  
30 not pay much attention to the proposal and she cannot remem-  
31 ber any of the numbers on the proposal because Doug True was  
32 busy stating how much money the School District could save

1 by not paying the employees' insurance; 4) that Doug True  
2 asked them to talk to Brenda Klein and Georgia Williams and  
3 tell Klein and Williams not to expect or not to ask too much  
4 from negotiations; and that she did not talk to Brenda Klein  
5 and Georgia Williams about the incident.

6 7. Union witness Marcie Strever, housekeeper, testified  
7 that Doug True handed her a key ring from a private cleaning  
8 company, she read it, and handed it back to Mr. True; that  
9 sometime after the Union's proposals were mailed and before  
10 the first negotiations meeting, probably March, Doug True  
11 entered the junior high school music room and asked Linda  
12 Zelmer and her if they wished to work or do their job of  
13 sweeping entrance ways and locking doors etc.; that Doug  
14 True handed her a proposal sheet which had the costs of  
15 contract cleaning on one side versus the cost of the School  
16 District cleaning on the other side; that the proposal sheet  
17 listed the savings; that Doug True told Strever and Zelmer  
18 to look over the proposal; that Doug True said he was showing  
19 the proposal to Strever and Zelmer as friends and if they  
20 told anyone, he would deny showing it to them; that Doug  
21 True asked Strever and Zelmer to casually talk to Brenda  
22 Klein and Georgia Williams and tell them not to get carried  
23 away with demands or strikes; that she did not talk to  
24 Brenda Klein or Georgia Williams about the incident; and  
25 that she did not talk to anyone about the incident until the  
26 June 2nd Union meeting.

27 8. During Management's case in chief, Marcy Strever  
28 testified that sometime in April or May, Doug True discussed  
29 with her a problem about the quality of her work; that if  
30 she did not do the work to the teachers' standards within a  
31 week, she would be written up; that her work is satisfactory  
32 today; and that this is the only time she can recall being  
threatened.

1           9.    During the Union's rebuttle case, Marcy Strever  
2 testified that her vote to ratify the new collective bargaining  
3 agreement was influenced by her concern about subcontracting  
4 and aggravated by the showing of the subcontract proposal;  
5 and that the proposal was in a clear plastic cover; was  
6 typewritten, compared the cost and was shown to her sometime  
7 before the collective bargaining contract ratification vote.

8           10.   Dennis O. Espeland testified that he asked for a  
9 study of the housekeeping costs to be done about the last of  
10 March or the first of April; that it is his responsibility  
11 as chief executive officer for the School District to keep  
12 the cost of the programs down while providing the best  
13 program; that in November, 1981, the School District prepared  
14 a budget calendar for the new budget process which set forth  
15 a schedule for final adoption of all non-salaried programs  
16 of the general fund budget for February 5th and which scheduled  
17 the final adoption of all certified and non-certified salaries  
18 for the general budget for March 5th (Management Exhibit  
19 #1); that the study was part of the normal budget process;  
20 that a cost comparison study for housekeeping was last done  
21 in about 1974 which produced a finding of a higher cost for  
22 subcontracting housekeeping work; that he asked Doug True to  
23 obtain the cost of subcontracting the housekeeping services  
24 along with a cost analysis by the end of May for presentation  
25 to the school board in June; that the cost analysis (Informa-  
26 tion Sheet, Management Exhibit #3) was prepared and presented  
27 to him the last part of May; that the cost analysis was  
28 typed by his secretary in June from worksheets prepared by  
29 Doug True; that he presented the cost analysis to the school  
30 board at a work study meeting on June 28th (Management  
31 Exhibit #2); that the fact the Teamsters were in negotiations  
32 with the School District had no effect on the decision to

1 study subcontracting the housekeeping services; and that the  
2 school district has the right to subcontract the housekeeping  
3 services.

4 11. Doug True testified that he is the Supervisor of  
5 the Maintenance and Housekeeping Program at the Lockwood  
6 School District, that he was directed to do a cost study  
7 about subcontracting the housekeeping program to a private  
8 cleaning company; that an unidentified "we" made calls to  
9 ten cleaning companies on March 26th asking for bids to  
10 perform the housekeeping duties at the School District; that  
11 he believes a couple of the private cleaning companies  
12 visited the school March 26th or 29th and two or three  
13 visited the school for the next four or five days; that he  
14 believes the first subcontracting bid from the Billings  
15 Sheltered Workshop was mailed on March 30th and received by  
16 the School District on March 31st; that the second subcontrac-  
17 ting bid from Maxine's was received by the School District  
18 on April 1; that he believes the third and fourth subcontrac-  
19 ting bids were received by the School District on April 7th  
20 and 8th, respectively; that he did not receive any other  
21 written bids but received some other bids by phone which he  
22 did write down on worksheets; that as soon as the bids came  
23 in, he took them immediately to the Superintendent and he  
24 did not keep a copy of the bids; that on the evening of  
25 April 8th there was a work study meeting of the School Board  
26 at which he gave the School Board some information based on  
27 the bids received by the school district; that at the work  
28 study meeting of the School Board he was asked to get more  
29 information and to do a cost factor comparison on the subcon-  
30 tracting bids; that he worked on the additional information  
31 and cost factors starting April 9th through the 14th or 15th  
32 of April; that he typed the additional information on April

1 14th or 15th; that he delivered the additional information  
2 to the Superintendent and this was the first time the infor-  
3 mation was ever put on a typed piece of paper; that when he  
4 got the bids he wrote down the information from the bids on  
5 his worksheets sometime between April 9th and April 14th;  
6 that with so many cleaning contractors visiting the school  
7 some employees asked why they were at the school; that he  
8 fictitiously told some of the employees there was a convention  
9 downtown and the visitors were custodial supervisors looking  
10 over the School District; that he made up the above story  
11 because the Superintendent told him to keep the subcontracting  
12 study confidential; and that he does not know if he or the  
13 unidentified "we" told any of the private cleaning companies  
14 to keep the subcontracting study confidential other than to  
15 tell them that his discussion with them and any resulting  
16 information was not to be talked about. Doug True alterna-  
17 tively testified that he specifically did not tell the  
18 private cleaning companies to keep the subcontracting study  
19 confidential and still later in his testimony that this  
20 failure to request confidentiality was an oversight on his  
21 part; that to the best of his judgment, no cleaning company  
22 employee could have talked to or threatened any School  
23 District employees at the school; and that one of the house-  
24 keepers mentioned to him that another child said something  
25 to her child about his father was going to be doing her  
26 mother's job this summer.

27 Doug True testified as follows:

28 LARSEN: Did you talk to any employee and say  
29 'Don't get carried away, you better get  
30 a message to the Bargaining People' I  
31 believe it was Brenda and Georgia, uh  
32 not to push anything at the table?

TRUE: Okay. Now at - when this discussion  
came up with bidding of the proposals  
versus the present services and private  
services and they were getting excited



1 about it, I said don't get carried away,  
2 that it was just a study.  
3 Q: When did you say that?  
4 A: One. After I was told I could say  
5 something about it.  
6 Q: And when was that?  
7 A: Okay. I believe that, that, that the  
8 rumors started to hit out around the 9th  
9 or the 8th or 9th at that time and I  
10 believe it was the 9th or 10th or 12th  
11 that I, I made that statement. I went  
12 around and talked to all the individual  
13 different people in the areas.  
14 . . . . .  
15 I don't know when it was first knowledge-  
16 able for them. The rumors started  
17 coming in around the 8th or 9th.  
18 Q: Of what month?  
19 A: Of April.  
20 Q: And it was at that time you said 'Don't  
21 get excited' or, or what did you say?  
22 A: No, at that time nothing was said until  
23 I came to the superintendent and talked  
24 to him and asked him what to do.  
25 Q: And then he said to you what, specifically?  
26 A: He told me, specifically, to tell them  
27 yes a study was being done and that to  
28 compare the different costs and stuff  
29 and that with that time I went around  
30 and told them and the ones that were  
31 excited or getting excited or upset  
32 about it. I stated that not to get  
excited it was just a study.

(Tape #2).

Further, Doug True testified that he did not know  
anything about locking the doors or sweeping entrance ways  
in the Union proposals or in the Union collective bargaining  
contract; that he was not aware of anything that was proposed  
by the Union; that he was not involved in any of the collective  
bargaining; that he did not say anything about the propo-  
sals; that he did not put any pressure on anyone to accept  
anything at the collective bargaining table; that he did not

1 hear anyone say anything about the Union proposals; that he  
2 never showed anyone a copy of the subcontracting study or  
3 the worksheets; that he never threatened or subtly threatened  
4 any employee because of Union activities; that Maxine's gave  
5 him some pens when they gave the district a subcontracting  
6 bid on April 1 and about a week later Maxine's gave him some  
7 key rings; that he gets alot of promotional items; and that  
8 he may have offered the employees some key rings.

9 During cross-examination, Doug True testified that he  
10 kept a worksheet with the dates on it, the listing of the  
11 companies he called, the dates he had appointments with the  
12 companies and the dates the companies responded; that he  
13 made one statement to the School District on April 8th; that  
14 he finished his study about April 14th or 15th but the date  
15 is not on the worksheet; that he denies Linda Zelmer's and  
16 Marcie Strever's version of the incidents; and that he did  
17 not show Linda Zelmer or Marcie Strever anything.

18 12. School District witness Yvonne Carol Brush, House-  
19 keeper, testified that she knew of the subcontracting study  
20 in March or April and before the union ratification vote on  
21 the collective bargaining agreement; that Doug True never  
22 talked to her about the subcontracting study; that noone  
23 ever told her about the subcontracting study; that she knew  
24 two of the men from a private cleaning company who visited  
25 the school; that she did not feel coerced; that she would  
26 not say she was afraid because of the subcontracting study  
27 but was in a state of limbo thinking about the subcontracting  
28 study; and that her contract ratification was based on  
29 information from the Union and the negotiating team and not  
30 based on any outside influence.

31 13. The parties held their first bargaining session on  
32 April 7th, 1982.

14. The parties held their final bargaining session on April 9, 1982 at which the School District presented their last and final offer. With no tentative agreement, the bargaining team took the School District's final offer back to the bargaining unit for a vote.

15. The bargaining unit ratified the School District's last and final offer on April 12, 1982.

16. Mr. V. E. "Bud" Henman, Teamster's Business Representative, testified that on June 2nd, 1982 at a Union meeting he was first told about the incidents in the junior high school bandroom; that if he had known of the incidents during negotiation, he would have been harder at the bargaining table; and that he cannot think of any other effect the incident had.

## II

## DISCUSSION

The charges and prayer of the Union states:

Charging Party is the certified exclusive representative for housekeepers and custodians employed by Defendant in its Lockwood schools. The parties have been negotiating for a collective bargaining agreement, reached agreement and the tentative agreement was "ratified" by the membership. Charging Party has just been informed that, beginning in late March 1982 and continuing throughout the period of negotiations, Douglas True, defendant's agent and supervisor of the bargaining unit employees, has been threatening such employees with loss of their jobs because of their union activity. He has displayed a proposed subcontracting agreement between the school district and an independent cleaning contractor, warning employees "not to get carried away" in negotiations or they would be replaced by an outside firm. Throughout the negotiating period he has been taunting employees with the threat of replacement because of the negotiations. Consequently, the acceptance of the negotiated agreement has been based on fear, coercion and threats and the "ratification" does not indicate the informed, uncoerced consent of the employees.

Charging Party seeks an order from the BPA nullifying the agreement, setting it aside, directing defendant to cease and desist its threats to replace bargaining unit employees and to negotiate a new agreement in good faith.

Looking at Finding No.'s 1, 2, 3, 4, 5, 13, 14, and 16, I can agree that the Union is the exclusive representative of the Housekeepers, Custodians and an Offset Printer employed by the Defendant; that the parties were negotiating a new collective bargaining agreement; that the Union had ratified an offer from the School District; and that the Union was first informed of a possible unfair labor practice on June 2, 1982.

By comparing Finding No.'s 6, 7, 8, 9, 10, 11, and 12, I conclude the witnesses only agree on an incident involving key rings from Maxine's Cleaning Service but the witnesses do not agree on the time-frame of such an incident. In order to resolve the conflicting testimony set forth in Findings, I turn to the NLRB for guidance. Administrative Law Judge Elbert D. Gradsden in F. S. Willey Co., Inc. and William 224 NLRB No. 151, (1976) set forth the following lesson:

"The second issue involves the credibility of the Ober and Respondent's Vice President Willey, as to whether Vice President Willey offered Ober a job at Respondent's Manchester terminal provided Ober resigned from the union (1898 of the IAM), and thereafter stated that he did not want and was not going to have any unions in Manchester.

A resolution of the above described issues calls for an objective determination of the veracity of the two witnesses whose testimony is highly conflicting on the crucial questions. While it is difficult in most instances to resolve such vex questions of fact to which the parties alone bear witness, I am nevertheless compelled to consider the relationship of the parties, one to the other, the readily responsive, nonselective, nonexaggerating, consistent and straightforward manner in which they testified, the reasonableness of efforts made by each to bring essential witnesses and appropriate documentary evidence before the Court, as well as how such testimony or other evidence relates to the logical consistency of all of the evidence of record and the sequence of events as they transpired.

(At 224 NLRB at 1175)

Using the above teachings, I find that the testimony

1 between Dennis O. Espeland, who stated the cost analysis was  
2 presented to him the last part of May and typed by his  
3 secretary in June from worksheets prepared by Doug True, and  
4 Doug True, who stated he typed the additional information on  
5 April 14th and 15th and delivered the additional information  
6 to the Superintendent, to be inconsistent. The testimony of  
7 Dennis Espeland, which was to the effect that the fact that  
8 the Teamster's were in negotiations with the School District  
9 had no effect on the decision to study the subcontracting of  
10 the housekeeping program, is not logically consistent with  
11 the school budget calendar, Management Exhibit #1, which  
12 establishes a schedule for the final adoption of all certified  
13 and non-certified salaries for the general fund budget for  
14 March 4th, a week before the first Union proposal and about  
15 three weeks before the study was ordered. Why order a study  
16 regarding the costs of subcontracting (on or about March  
17 26th - which is two weeks after the union proposals were  
18 first submitted to management) if the salaries for the new  
19 budget have already been adopted on March 4th? The testimony  
20 of Doug True who stated he went around and talked to all the  
21 individual different people about the subcontracting study  
22 and the testimony of Yvonne Carol Brush who stated that Doug  
23 True never talked to her about the subcontracting study, are  
24 inconsistent. The testimony of Doug True lacks straightfor-  
25 wardness when asked about telling the private cleaning  
26 companies to keep the study confidential; and that the  
27 testimony of Doug True who stated he did not know about the  
28 Union contract proposals or the Union collective bargaining  
29 contract and who states he is the supervisor covering the  
30 employees work under the collective bargaining contract is  
31 not logical. Also based upon my observation of the demeanor  
32 of the witnesses and after a thorough review of the tape

1 recording of the hearing, I judge the testimony of Linda  
2 Zelmer and Marcie Strever to be credible. In addition, to  
3 the above review of the testimony, I judge the testimony of  
4 Doug True to be, at times: 1) well rehearsed (remembering  
5 dates); 2) being led through his testimony (getting the  
6 bids to the Superintendent immediately) and; 3) hearsay  
7 (children talking about the housekeeping subcontracting).

8 I Find that Doug True did offer key rings from Maxine's  
9 Cleaning Company to Linda Zelmer and Marcie Strever; that  
10 Doug True did tell Linda Zelmer and Marcie Strever if they  
11 did not wish to lock doors and sweep entrances - a Union  
12 negotiations demand - they would get their hours cut; that  
13 Doug True did show Linda Zelmer and Marcie Strever a cost  
14 comparison between a proposed subcontracting bid from a  
15 private cleaning company and the cost of the School District  
16 doing the same work - eliminating the employees' job; and  
17 that Doug True did ask Linda Zelmer and Marcie Strever to  
18 talk to Brenda Klein and Georgia Williams about the Union  
19 demands, Union expectations and Union activities. The  
20 question is, does the above activity constitute an unfair  
21 labor practice?

22 In Yearbook House, a subsidiary of Shaw Barton, 223  
23 NLRB 1456, 92 LRRM 1191 (1976), the NLRB found the employer  
24 violated Section 8(a)(1) of the NLRA by threatening to close  
25 one of its facilities if the Union did not accept the employer's  
26 bargaining proposals or if the Union insisted on its own  
27 proposals at an employee meeting. By contrast in Fisher Foods,  
28 Inc., 245 NLRB No. 87 (1979), the administrative law judge  
29 set forth the following:

30 The allegations that Respondent Fisher, by  
31 Duvin, violated Section 8(a)(1) of the Act [NLRA]  
32 by telling the Union that it was considering  
subcontracting parts of its operation cannot be  
sustained. The remark was made in a context of

1 bargaining where, if anything, Respondent Fisher  
2 was required to disclose any thought of subcontracting. Whether the remark was made to satisfy  
3 Respondent's statutory obligation or as a tactical maneuver to secure more favorable contractual  
4 terms, there is no element of interference, restraint, or coercion and therefore no violation of  
5 Section 8(a)(1). Accordingly, I recommend that paragraph 8(a) of the complaint be dismissed.

6 (At 245 NLRB at 695)

7 For the foregoing reasons, I conclude that the School  
8 District by the totality of its conduct, did interfere and  
9 coerce the employees in the exercise of their rights set  
10 forth in 39-31-201 in violation of 39-31-401(1). That some  
11 conduct of the School District attempted to influence the  
12 negotiations between the parties by threats away from the  
13 bargaining table to subcontract bargaining unit work. This  
14 is a failure to bargain in good faith in violation of  
15 39-31-401(5).

16 This conclusion is based on the fact that the School  
17 District relayed the subcontracting study information to the  
18 employees and not to the union as was done in Fisher, supra.  
19 Plus the fact that the School District coerced Linda Zelmer  
20 and Marcie Strever by threatening to cut their hours of work  
21 because of the union proposals. This conclusion is also  
22 based on the totality of the School District's conduct  
23 because some of the conduct such as the key ring incident  
24 will not support a violation, in and of itself.

25 What is the appropriate remedy is the final question.  
26 The NLRB has ordered remedies such as none at all in Fisher,  
27 supra, to a cease and desist order in Yearbook, supra, to  
28 reinstatement in F.S. Willey, supra, to a bargaining order  
29 without a representation election in Gissel Packing Co., 395  
30 US 575, 71 LRRM 2481 (1969). In cases where the employer  
31 had interfered, restrained and coerced the employees in the  
32 exercise of their rights as set forth in Section 7 of the  
NLRA, the NLRB remedies all peer to strike a balance between

1 the severity of the employer's action and the purpose of the  
2 NLRA, Section 1, 29 USCA 151. (See: NLRB v. Gullett Ginn Co.,  
3 340 US 361, 27 LRRM 2330 (1951; Phelps Dodge Corp. v. NLRB,  
4 313 US 177, 8 LRRM 439 (1941); IAM v. NLRB, 311 US 72, 7  
5 LRRM 282 (1940)). The Collective Bargaining Act for Public  
6 Employees appears to have the same purpose Section 39-31-101  
7 MCA as the NLRB has.

8 With Linda Zelmer stating that she did not talk to  
9 Brenda Klein or Georgia Williams about the Union demands or  
10 actions, with Marcie Strever stating that she did not talk  
11 to Georgia Williams or Brenda Klein or anyone until June 2nd  
12 about the Union's demands or actions and with Bud Henman  
13 stating he would have been harder at the bargaining table  
14 and he cannot think of any other effect the incident had, I  
15 can only conclude the actions of the School District to be  
16 limited. Being unable to find an NLRB or public sector case  
17 supporting the requested remedy of nullifying the existing  
18 collective bargaining agreement and with the briefs containing  
19 no cases supporting such a remedy plus the limited actions  
20 of the School Board, I conclude to void the existing collective  
21 bargaining agreement under these circumstances would not add  
22 to labor peace as set forth in Section 39-31-101, MCA.  
23 Although at the same time, the employees must be informed  
24 that the actions of the School Board were not appropriate.  
25 To facilitate this end, the School District will be ordered  
26 to cease and desist plus post notice.

27 I must point out that this recommended order does not  
28 address the question of the School District's right to  
29 conduct a study of subcontracting the housekeeping services  
30 even though the timing of such study is highly questionable;  
31 that this recommended order does not address the question of  
32 the School District's right to subcontract under the authority



1 of Montana's Collective Bargaining Act; that this recom-  
2 mended order does not address the question of the School  
3 District's right to subcontract under the authority of the  
4 collective bargaining agreement between the parties; and  
5 that this recommended order does not address the question of  
6 the School District's right to subcontract under Fiberboard,  
7 379 US 203 (1964) as adopted by the Board of Personnel  
8 Appeals in IBEW v. Helena School District, ULP 18-1978 and  
9 Carpenters v. Silver Bow County, ULP 3-1975 as argued by the  
10 School Districts. (See: Wisconsin Employment Relations  
11 Comm. vs. City of Evansville, 230 NW 2nd 688, 89 LRRM 2989  
12 (1975)).

13 All other alleged incidents as set forth in the charges  
14 are dismissed because of lack of evidence.

### 15 III

#### 16 CONCLUSIONS OF LAW

17 By threatening to cut the work hours of Linda Zelmer  
18 and Marcie Strever because of the Union's proposal to not  
19 have housekeepers lock doors and sweep entrance ways, by  
20 showing Linda Zelmer and Marcy Strever a cost comparison  
21 between a proposed subcontracting bid from a cleaning company  
22 and the cost of the School District doing the same work -  
23 eliminating the employees' job, and by asking Linda Zelmer  
24 and Marcie Strever to talk to Brenda Klein and Georgia  
25 Williams about the Union's actions, demands and expectations,  
26 the Yellowstone County School District Number 26, Lockwood  
27 School District by the actions of Doug True did violate  
28 Section 39-31-401(1), MCA of the Collective Bargaining Act  
29 for Public Employees.

### 30 IV

#### 31 RECOMMENDED ORDER

32 The Yellowstone County School District Number 26,  
Lockwood School District, its officers and its agents shall:

1) Cease and desist from interfering and coercing the employees in the exercise of their rights as guaranteed in Section 39-31-201 MCA by threatening to cut the hours of bargaining unit members, by threatening to subcontract bargaining unit work, or otherwise threatening unit members in any manner, in order to gain bargaining concessions.

2) Take the affirmative action to effectuate the policy of Section 39-31-101 MCA by posting the attached notice marked "Appendix" after being duly signed by the Defendant's representative. The posting will be for a period of thirty (30) calendar days in conspicuous places including all places where notices to the affected employees are customarily posted and take reasonable steps to insure that the notice is not altered, defaced or covered by other materials. And,

3) Notify the Administrator of the Board of Personnel Appeals in writing in thirty (30) calendar days from the date of this recommended order that the Defendant has complied with this recommended order.

Dated this 8<sup>th</sup> day of February, 1983.

BOARD OF PERSONNEL APPEALS

BY:

Rick D'Hooge  
Hearing Examiner

NOTE: As stated in the Personnel Appeals rules, the parties have twenty (20) calendar days to file written exceptions to this recommended order. If no exceptions are filed this recommended order becomes the full and final order of the Board of Personnel Appeals.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE BOARD OF PERSONNEL APPEALS

An agency of the State of Montana.

WE WILL NOT coercively threaten employees with reduction in work hours or with subcontracting of Union work if the Union does not accept the School District's proposals or if the Union does not modify or relinquish its own bargaining proposals.

WE WILL NOT in any like manner interfere with, restrain, or coerce our employees in the exercise of any rights guaranteed to them by Section 39-31-201 of the Montana Codes Annotated.

Section 39-31-201, MCA, states: Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protections free from interference, restraint, or coercion.

LOCKWOOD SCHOOL DISTRICT #26

BY: \_\_\_\_\_  
SUPERINTENDENT

CERTIFICATE OF MAILING

The undersigned does hereby certify that a true and correct copy of this document was mailed to the following in the 8<sup>th</sup> day of February, 1983:

Emily Loring  
121 4th Street North  
Suite 2G  
Great Falls, MT 59401

L. R. Larson  
Larson & Associates, Inc.  
1733 Park Hill  
Billings, MT 59102

  
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